

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT,

Plaintiff,

v.

TERRY PITCHER,

Defendant.

Case No. 1:04-CV-312

Hon. Richard Alan Enslen

ORDER

Plaintiff David J. Scott has appealed the October 20, 2005 Order of United States Magistrate Judge Ellen S. Carmody, which Order denied Plaintiff's request for entry of default as to a late-answering party (who has since asserted substantial defenses by dispositive motion). Oral argument is unnecessary.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the review of a magistrate judge's pretrial orders is limited to whether the orders are "clearly erroneous or contrary to law." *See United States v. Raddatz*, 447 U.S. 667, 673 (1980); *Flournoy v. Marshall*, 842 F.2d 875, 876-77 (6th Cir. 1988). This standard is necessarily deferential; it does not permit reversal unless the reviewing court is left with the definite and firm conviction that an error has been made. *See United States v. Kellams*, 26 F.3d 646, 648 (6th Cir. 1994) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)); *Chakales v. Comm'r of Internal Revenue*, 79 F.3d 726, 728 (8th Cir. 1996); *see also United States v. Roper*, 135 F.3d 430, 432 (6th Cir. 1998).

Plaintiff argues that the Magistrate Judge was mistaken in failing to enter default because of Defendant's "wilful" late filing. Plaintiff also argues, in the alternative, that the Order should

have conditioned the non-entry of default upon the payment of a monetary sanction. Neither argument is persuasive. The district court enjoys considerable discretion concerning both the entry of default and setting aside defaults. *See Waiferson Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992); *see also Mfrs. ' Indus. Relations Ass'n v. East Akron Casting Co.*, 58 F.3d 204, 208 (6th Cir. 1995). This is due to the strong federal policy favoring resolution of cases on the merits. *United States v. Real Property, All Furnishings Known as Bridwell's Grocery*, 195 F.3d 819, 820 (6th Cir. 1999); *Shepard Claims Serv., Inc. v. William Darrah & Assoc.*, 796 F.2d 190, 193 (6th Cir. 1986). Furthermore, even if the Magistrate Judge should have defaulted Defendant, her action is otherwise justified because such default should then have been set aside pursuant to the factors governing defaults under Federal Rule of Civil Procedure 55(c). *See Mfrs. ' Indus. Relations Ass'n*, 58 F.3d at 209; *United Coin Meter Co., Inc. v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6th Cir. 1983). No sanction is required either on the facts of this case (which demonstrate an inadvertent failure to timely answer).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's David J. Scott's Appeal (Dkt. No. 37) is **DENIED** and the Order of the Magistrate Judge (Dkt. No. 36) is **AFFIRMED**.

DATED in Kalamazoo, MI:
December 29, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE